

Justice companies failed to pay coal transportation fees, PSC says

- By Kate Mishkin Staff writer

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Five of Gov. Jim Justice's family coal companies haven't paid transportation fees that would go toward building and maintaining state roads.

They were among eight companies being investigated by the West Virginia Public Service Commission (PSC) for outstanding Coal Resource Transportation System violations and unpaid tonnage fees. The orders come as Justice continues to tout his four-year "Roads to Prosperity" program to fund road construction projects across the state.

But according to the PSC's orders, the companies failed to pay "tonnage fees" that would otherwise go toward constructing and repairing public highways and bridges that are heavily trafficked on by coal trucks.

The companies, according to the orders, also owe delinquent penalties from prior Notices of Violation. In all, the companies — Bluestone Industries; Chestnut Land Holdings, LLC; Kentucky Fuel Corporation; Nufac Mining Company, Inc. and Orchard Coal Company — owe \$114,100 for outstanding violations that stem from failing to report, or inaccurately reporting coal shipments.

In one case, Bluestone Industries already entered into a \$85,520 settlement agreement with the PSC that stemmed from unpaid fines and tonnage fees. The company paid about \$53,500, though, before it stopped paying altogether.

Justice did not respond to a request for more information for this article.

Three other companies were among the eight cited last Friday by the Public Service Commission for similar reasons. Reserve Resource Partners, Inc., Southeastern Land, LLC and Tyler Morgan, LLC each was issued an order by the PSC for its outstanding notices of violation and failing to pay tonnage fees.

According to state code, a shipper who loads more than 88,000 pounds of coal has to pay the PSC five cents per ton by the 10th day of the month. The PSC collects permit and tonnage fees for the West Virginia Division of Highways' Road Fund.

That money in the Road Fund goes toward maintaining public roads that can get worn down by coal trucks.

In Fiscal Year 2018, the PSC collected about \$1,561,655 in tonnage fees, and about \$586,000 in Coal Resource Transportation System permit fees, said Susan Small, spokeswoman for the PSC.

The companies have until Aug. 9 to respond to the orders, and the PSC will ultimately decide whether to impose penalties.

This isn't the first time Justice's family companies have been ordered to pay delinquent penalties and fees.

During his campaign in 2016, NPR reported that Justice's companies owed \$15 million in six states for mine safety penalties, state coal severance and withholding taxes and property taxes, among other things.

Reach Kate Mishkin at kate.mishkin@wvgazetteemail.com, 304-348-4843 or follow @katemishkin on Twitter.

Justice family companies agree to settlement with PSC

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After they were ordered to pay coal transportation fees, five of Gov. Jim Justice's family companies agreed to a discounted settlement and paid their bills.

Justice's companies — [Bluestone Industries Inc.](#), [Chestnut Land Holdings](#), [Kentucky Fuel Corp.](#), [Nufac Mining Co. Inc.](#) and [Orchard Coal Co.](#) — paid \$175,282 to the West Virginia Public Service Commission, about \$32,800 less than they were originally charged, according to PSC documents.

The companies entered into the [joint stipulation and settlement agreement](#) in October. They paid the fees in four installments, the last of which was due Thursday afternoon.

The settlement includes "tonnage fees," which would otherwise help repair roads that are heavily trafficked by coal trucks, and administrative sanctions that stemmed from failing to report, or inaccurately reporting, coal shipments. The companies received orders in the middle of July to "show cause" on why the PSC shouldn't enforce Notices

of Violation against the companies in circuit court. The order also launched an investigation into tonnage fees owed and whether the PSC should impose fines.

The July orders came as Justice was touting a four-year "Roads to Prosperity" program to fund road construction projects throughout the state.

In a news conference around that time, Justice criticized press coverage of the lack of payment. However, he later admitted the money was owed.

"There was an article that came out that we owed some — I didn't even read the article — but there was an article that came out in regard to the PSC in which we owed a hundred thousand dollars or whatever," Justice said of a Charleston Gazette-Mail report about the orders. "And, to be perfectly honest, it was right; it was exactly right."

According to state code, a shipper who loads more than 88,000 pounds of coal must pay the PSC 5 cents per ton by the 10th day of the month. The PSC collects permit and tonnage fees for the state Division of Highways' Road Fund. The money in the Road Fund goes toward maintaining public roads that can get worn down by coal trucks.

In fiscal year 2018, the PSC collected about \$1,561,655 in tonnage fees, and about \$586,000 in Coal Resource Transportation System permit fees, from companies statewide, according to Susan Small, spokeswoman for the PSC.

In all, the Justice-owned companies were fined \$131,300 for administrative sanctions, and \$35,012 for a previous settlement agreement between the Transportation Division of the PSC and Bluestone Resources Inc., Bluestone Industries' parent company. In addition, the companies owed tonnage fees totaling \$41,794.20.

Instead of paying the full administrative sanctions, the companies agreed to instead pay \$98,475 — a 25 percent difference — in two installments, on Oct. 31 and Nov. 29. Administrative sanctions are imposed for violations related to the PSC's Coal Resource Transportation System rules on overweight shipments.

"The most important reason for settlement is that we do not have to litigate these cases in circuit court, which is very costly and time consuming, and then seek enforcement of our judgments," Small said in an email. "A successful settlement provides certainty of payment and reduces litigation costs."

The tonnage fees will go to the Division of Highways; the sanctions go to the PSC's Coal Resource Transportation System.

The companies were ordered to pay some of the tonnage fees and settlement fines on Oct. 16, and the remainder of the tonnage fees Nov. 16.

The companies also are required to review transportation registrations and keep records for three years.

In response to requests for information for this story, Bluestone Energy Group sent an email stating that it entered into the settlement and made two payments. The email did not include a signature, and an email asking for additional information about the settlements and orders was not returned.

Justice's family companies did not respond to requests for more information.

At a hearing held Oct. 16 in Charleston, Linda Bouvette, an attorney for the PSC, emphasized that discounting the fee is not normal practice.

"And we don't anticipate doing that in the future," she said.

At the end of the hearing, PSC Chairman Michael Albert thanked the people in the room.

"I know that it took a lot of work on your part. And we appreciate your effort to get this thing, this matter, resolved," he said. "And let's move forward to get this thing finalized and off our docket."

The PSC will issue an order dismissing the cases once it receives the last payment, according to PSC documents.

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